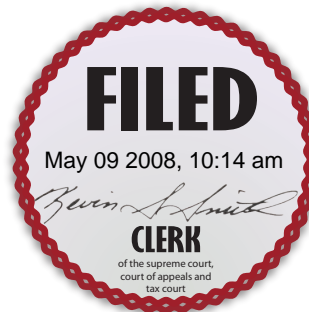


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SUSIE FISHER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A05-0801-CR-23
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0701-FB-9

May 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Susie Fisher pleaded guilty to Dealing in a Schedule I, II, or III Controlled Substance,¹ a class A felony. As the sole issue on appeal, Fisher argues that the trial court abused its discretion in sentencing her to the advisory sentence of thirty years.²

We affirm.

Susie Fisher lived in an apartment complex in Madison County, Indiana. There she met a man named Chris Sterling who gave her twenty methadone³ pills to sell for him while he was out of town. Fisher agreed to sell the pills in exchange for Sterling's help in paying bills and buying food. On August 23, 2006, Fisher, then forty years old, sold five methadone pills to R.H., then seventeen years old, for \$2 a pill. R.H. ultimately died from an overdose of the methadone Fisher sold to him. An autopsy report showed that the only drugs in R.H.'s system were methadone, caffeine, and nicotine.

On January 8, 2007, the State charged Fisher with class B felony dealing in a schedule I, II, or III controlled substance. The State amended that charge to an A felony on January 17, 2007. A guilty plea hearing was held on June 25, 2007. Prior to the hearing, the State tendered to Fisher a written plea agreement that called for Fisher to receive a total sentence of thirty years with ten years suspended and twenty years executed in the Department of Correction. Fisher chose, however, to plead guilty to

¹ Ind. Code Ann. § 35-48-4-2 (West, PREMISE through 2007 1st Regular Sess.).

² Ind. Code Ann. 35-50-2-4 (West, PREMISE through 2007 1st Regular Sess.) (“A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years with the advisory sentence being thirty (30) years”).

³ Methadone is a schedule II controlled substance. I.C. § 35-48-2-6 (West, PREMISE through 2007 1st Regular Sess.).

dealing in a schedule I, II, or III controlled substance as a class A felony without the benefit of a plea agreement.

The trial court held a sentencing hearing on July 26, 2007. In its oral sentencing statement, the trial court identified as aggravating circumstances that Fisher sold methadone to multiple teenage boys and that she was in a position of trust. The trial court explained that it found Fisher's criminal history, which includes only one prior misdemeanor conviction and no prior felony convictions, to be "insignificant" and thus, refused to consider it as an aggravator.⁴ *Transcript* at 79. As mitigating, the court accepted Fisher's expression of remorse and noted that Fisher cooperated with the investigation and that she pleaded guilty. The trial court stated that it afforded minimal weight to the latter two factors. In its sentencing statement, the trial court also acknowledged Fisher's medical problems. Based upon its assessment of the circumstances, the trial court sentenced Fisher to the advisory sentence of thirty years. *See* I.C. § 35-50-2-4. On September 10, Fisher requested permission to file a belated notice of appeal, which the trial court granted the same day. Fisher filed the instant appeal on September 14, 2007.

⁴ We note that Fisher included in her appendix a copy of the presentence investigation report on white paper. We remind Fisher that Ind. Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1), which includes presentence investigation reports, must be filed in accordance with Ind. Trial Rule 5(G). That rule provides that such documents must be tendered on light green paper or have a light green coversheet and be marked "Not for Public Access" or "Confidential". T.R. 5(G)(1).

On appeal, Fisher challenges the sentence imposed.⁵ We begin by noting that sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218. Under the new sentencing scheme, a court may impose any sentence authorized by statute and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. *Id.* Thus, in *Anglemyer*, our Supreme Court held:

Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to “properly weigh” such factors.

Anglemyer v. State, 868 N.E.2d at 491. Therefore, “[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.” *Id.* Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Anglemyer v. State*, 868 N.E.2d 482.

Fisher first argues that the trial court improperly found that she was in a position of trust. Being in a position of trust is statutorily identified as an appropriate aggravating

⁵ Although Fisher states that her sentence is inappropriate, she does not provide a separate analysis as to the nature of the offense and the character of the offender. Fisher has therefore waived the issue of the appropriateness of her sentence for appellate review. *See* Ind. Appellate Rule 46(A)(8)(a).

circumstance. *See* Ind. Code Ann. § 35-38-1-7.1(a)(8) (West, PREMISE through 2007 1st Regular Sess.) (“the court may consider the following aggravating circumstances . . . (8) The person was in a position having care, custody, or control of the victim of the offense”). “Even in the absence of this special relationship, we have found the fact that a defendant had a close relationship with the victim to constitute a valid aggravating circumstance.” *Roney v. State*, 872 N.E.2d 192, 202 (Ind. Ct. App. 2007), *trans. denied*; *See, e.g., Johnson v. State*, 845 N.E.2d 147 (Ind. Ct. App. 2006) (victim was child of defendant’s neighbor and a friend of defendant’s daughter), *trans. denied*.

Here, the trial court noted the nature of the relationship between Fisher and R.H. Indeed, the record reveals that Fisher was more than a neighbor and had more than a casual relationship with R.H. Fisher stated that she had known R.H. since he was in kindergarten and admitted that he was “like my own son.” *Transcript* at 11. R.H. was best friends with Fisher’s son and the two boys were usually at “one of the houses or the other”. *Id.* at 35. Fisher was also good friends with R.H.’s mother, and R.H.’s parents trusted Fisher and believed no harm would come to their son while at Fisher’s home. It is clear that Fisher shared a parent-like relationship with R.H. Fisher violated her position of trust when she sold R.H. the drugs that led to his death. The trial court did not abuse its discretion in finding as an aggravating circumstance that Fisher was in a position of trust with R.H.

Fisher argues that the trial court abused its discretion by failing to identify her medical problems as a mitigating circumstance. At the sentencing hearing Fisher testified that she suffers from celiac disease, cirrhosis of the liver, and hepatitis. Fisher

stated that due to the celiac disease, she vomits every morning and has diarrhea every day. She testified that she takes six different medications on a daily basis and that she is on a strict, gluten-free diet to control the celiac disease.⁶

Although the trial court did not explicitly mention Fisher's medical problems with the other mitigating factors, the trial court did not wholly overlook them. The trial court expressed sympathy for Fisher, stating: "Now I'm really, really, really sorry about all of your medical troubles. That cannot be a pleasant life that you have. I suppose if you follow your diet strictly you get along pretty well, but it doesn't sound pleasant if you get one milligram of glut[e]n". *Id.* at 78. Thus, it appears as though the trial court considered her medical conditions, but did not find such to be mitigating.

To be considered a significant mitigating circumstance, a defendant must show that a medical condition would render incarceration a hardship. *See Moyer v. State*, 796 N.E.2d 309 (Ind. Ct. App. 2003) (finding abuse of discretion for failing to consider illness as a significant mitigating circumstance where defendant testified at length about the medical hardships that he would endure while incarcerated due to his suffering from lymphoma, malignancy of the larynx, and recurring tumors and that he also suffered from pulmonary disease and relied upon a breathing apparatus that required frequent tracheal cleanings and sterile catheters which could not be provided by the jail on a regular basis). Here, Fisher testified that she requires daily medications and must follow a strict diet. There is nothing in the record, however, that supports her claim that the Department of

⁶ It was explained that her diet is so strict that her food must be prepared separate from other foods with utensils that have not been used to cook other foods.

Correction will not be able to accommodate her dietary restrictions.⁷ Moreover, there is no evidence in the record establishing that Fisher's medical condition should be a factor in determining an appropriate period of incarceration. We therefore conclude that the trial court did not abuse its discretion by failing to identify and afford significant mitigating weight to Fisher's medical condition. *See Henderson v. State*, 848 N.E.2d 341 (Ind. Ct. App. 2006) (finding no abuse of discretion where trial court took note of defendant's multiple health problems but did not consider her illnesses to be a mitigating circumstance).

Fisher also argues that the trial court afforded insufficient mitigating weight to the fact that she pleaded guilty. Here, the trial court properly found Fisher's guilty plea constituted a mitigating circumstance. The trial court explained, however, that it afforded the guilty plea minimal weight in light of the fact that numerous individuals had come forward and identified Fisher as the person who sold the methadone to R.H.⁸ The relative weight the trial court assigned to Fisher's guilty plea is not subject to appellate review for an abuse of discretion. *See Anglemyer v. State*, 868 N.E.2d 482.

Judgment affirmed.

BAILEY, J., and KIRSCH, J., concur.

⁷ To make sure the DOC is made aware of Fisher's health status, the trial court stated at the conclusion of the sentencing hearing: "If you will furnish to me all of these medical documents, we will make sure they go with the commitment documents so that the D.O.C. will know how to treat this lady." *Transcript* at 84.

⁸ As we have observed before "a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one". *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*.